

**OFFICE OF THE HEARING EXAMINER  
CITY OF RENTON**

**REPORT AND RECOMMENDATION**

APPELLANT: Douglas Chappelle

Stonegate Lift Station Appeal of SEPA Determination  
LUA-09-049, ECF

After reviewing the Appellant's written requests for a hearing and examining available information on file, the Examiner conducted a public hearing on the subject as follows:

*The following minutes are a summary of the August 4, 2009 hearing.  
The legal record is recorded on CD.*

The hearing opened on Tuesday, August 4, 2009, at 9:16 a.m. in the Council Chambers on the seventh floor of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

The following exhibits were entered into the record:

<b><u>Exhibit No. 1:</u></b> Hearing Examiner's file containing the original appeal letter and notification of this hearing.	<b><u>Exhibit No. 2:</u></b> Impervious surface diagram
<b><u>Exhibit No. 3:</u></b> Black & white Aerial Photo with Wetland boundaries and 100' Circles to show location of buffer.	<b><u>Exhibit No. A:</u></b> Photo of the Critical Areas Report dated August 2008, Fig 4 and Ex. 7 to the SEPA report showing correct location of DP4
<b><u>Exhibit No. B:</u></b> Photo of the Critical Areas Report dated August 2008, Fig 4 and Ex. 7 to the SEPA report.	<b><u>Exhibit No. C:</u></b> Diagram in relation to Exhibits A & B showing Lots 1 and 2.
<b><u>Exhibit No. D:</u></b> Vicinity Map showing proposed lift station and utilities.	<b><u>Exhibit No. E:</u></b> Aerial photograph showing existing lift station and Location of new lift station.
<b><u>Exhibit No. F:</u></b> Copy of Stonegate Plat	<b><u>Exhibit No. G:</u></b> Note 18 which refers to Exhibit F
<b><u>Exhibit No. H:</u></b> Chart showing what lift station would include.	<b><u>Exhibit No. I:</u></b> Landscape Plan
<b><u>Exhibit No. J:</u></b> Stream and stream buffer	<b><u>Exhibit No. K:</u></b> Drawing of new lift station with buffer boundary.

<b><u>Exhibit No. L:</u></b> Enlargement of Exhibit K.	<b><u>Exhibit No. M:</u></b> Stonegate Homeowners' Association/City of Renton Letter of Agreement regarding the easement on Tract H.

Parties Present:

Vanessa Dolbee  
Ann Nielsen, Assistant City Attorney

Douglas Chappelle (Appellant)

**Preliminary Matter:** Ms. Nielsen stated that as part of the yellow file there is a critical areas report dated August 2008, in that report there is a Fig. 4, which is a diagram that she believed was in error. The error at issue is the location of DP4, the DP4 is correctly located in the NE quadrant of Exhibit A.

Douglas Chappelle stated that he was here because of three fundamental areas that as an impacted citizen, as a tax payer and also as a professional engineer these areas are very important to him.

As an impacted citizen, this project is taking place in his neighborhood and he has been involved with this project from the time it became publicly known. There have been a number of concerns that he has raised throughout the process.

One concern seems that his concerns have not been heard. Some were not addressed in the final package and he hopes that those might be corrected or explained through this hearing.

As a tax payer, the question appears to be how badly does the City really need this lift station given the changing circumstances. A quick calculation says that every man, woman and child is \$50 into this project. There is a financial interest in the right thing being done the first time, and finally as a professional engineer he is very much interested in seeing projects that impact the community being completed with professional confidence, completely and accurately well done from the very beginning.

He hopes to see that the City has accurately thought through this and that the project has accurately been assessed as being appropriate and the impacts that this will have on the community.

He is not here to shut down the project, it will ultimately be needed somewhere, some place and at some time. He would like to be assured that this is the right place and time for such a project. Based on current data, that does not appear to be entirely clear.

In his appeal, there are seven bullet points that he is most concerned about:

1. Incomplete and inaccurate package. There were several inaccurate calculations with respect to impervious area. The traffic control and safety plans are more important to the neighborhood. This neighborhood has been particularly hard hit with the Duvall Road, Coal Creek Parkway construction. The ERC simply stated that the traffic plan needed to be improved prior to starting the project. However, the traffic control plan was not required to be a part of the application for public comment. RCW does require obtaining and including information regarding significant impacts.

In terms of the impervious surface calculation, the City provided a landscaping plan with a calculation of several hundred square feet of impervious surface being added. The overlay of the grid on top of the landscaping (Ex. 2) plan shows that a more accurate calculation of the impervious area would be closer to 3,500 square feet. The report stated that the new impervious surface would be approximately 1,000 square feet.

The scale of the grid pattern indicates each square is exactly 10-feet. On the diagram, the light grey area is concrete, the light grey without any data is the existing building, and the dark grey area is pavement.

3. Wetland Downgrade Buffer Description. The first map he presented was a photo from the critical areas report that had been layered over with a map downloaded from Google, and on top of that were four drawn circles.

NE 26<sup>th</sup> is to the South and 148<sup>th</sup> is to the East. The solid black areas are the generator areas, control areas and pavement areas that were noted in the landscaping plan. The solid black line is the wetland boundary delineation, slightly below that is a dashed line for the wetland buffer boundary. The circles are all 100-foot radius circles and the photo shows that the 100-foot arcs overlap the installation of the facility and that the facility would encroach into the buffer.

4. Was withdrawn due to the City offering a correction to this issue.

5. Noise Standards. The ERC determined that an emergency generator would create a certain amount of noise at the property between Tract H and Lot 1, the City did not get an easement to, and the use of that would amount to trespass. The actual easement was recorded with King County and subsequently revised and corrected

Ms. Nielsen interjected that #5 is not an issue with SEPA and not a part of the SEPA determination and so would be beyond the jurisdiction of the Hearing Examiner. Item 2 and 7 are also not appropriate issues to be before the Hearing Examiner. Item 6, the Noise, Traffic Control and Traffic Safety Plan, while it is noted under appellant's concerns, these are premature at this point. Those are items that will be taken up at a later date prior to the commencement of the construction. They are not SEPA based issues.

Doug Chappelle continued that the noise calculation from the generator to the property line was not done correctly, it should be at the easement boundary rather than the lot line between Tract H and Lot 1. The applicant would have to add 6dBA of attenuation to the generator in order to meet the WAC required noise on top of the property that they control. The ERC has erred due to considering the wrong property boundary.

6. ERC failed to impose sufficient conditions to mitigate impact. There is no Traffic Control plan in existence. It appears that the public is being denied the opportunity to review, comment or object to documentation with respect to the Traffic and Safety Plans. There should be more attention to schedule and accuracy. In particular there should be more concern for the school children that gather in that location waiting for a school bus. Children from kindergarten through high school would gather and wait just a few feet from the construction site.

It appears that the ERC failed in their duties to ensure the completeness of the package such that it addressed the communities concerns under this applicant.

7. There are allowances within the RCW that state, if there are utilities projects then all the noise regulations and all other regulations do not apply. That does make sense, because a person does not need to file an injunction against a tractor making noise while installing a sewer line for an occupied house. Legislature has stated that if it is an essential utilities project, there cannot be nuisance stoppages of critical work.

This is not an essential utility project, as there is no one that is dependent upon this project being implemented that exist today. This has been shown by responses to emails and briefings at homeowner's association meetings. The City will not be able to point to a single person today that would suffer if this project did not move forward. On that basis, the ERC should have identified this as not being subject to the essential utilities exclusion within the RCW and assured that the applicant would conform to all applicable regulations regarding environmental, occupational safety and health as implemented in the RCW.

This then falls under the category of omission or failure to impose sufficient conditions.

The Examiner stated that it had been earlier stated that they did attempt to meet noise standards. They have not exempted themselves from complying with SEPA or other regulations because this is an essential project. This does not appear to be relevant at this point.

Mr. Chappelle further stated that the 45 dBA that they referred to is the day to day normal operations after they are finished with the construction. What the package is silent on is the construction activities. The ERC should have made a declarative statement one way or the other as to whether or not this project qualifies as an essential utility project.

Review of the record showed that some of the areas that fall under parks, recreational and open space came back with no comment. There were a number of public comments received that suggest that the community was concerned about these areas that are addressed by the SEPA with respect to animals, plants etc. The construction of the sanitary lift facility in this area, Tract H had been dedicated to open space. The Comprehensive Plan states that each department has certain responsibilities to defend these interest areas within the City and the ERC determination as published is not at all clear that such things were being done. There are bobcats, deer and bear running through that area, that space should be preserved and yet with this application, that space would be destroyed.

After discussion regarding Item #2, the Examiner stated that 2 was not a valid SEPA appeal issue based on the explanation given. The Examiner further stated that # 2 and #7 are out in regards to today's hearing.

A short break was taken --- Returned at 10:43 am

Ms. Nielsen stated that she had no cross examination for Mr. Chappelle. Ms. Dolbee would give background information, John Hobson would talk about project related issues and Mr. Christensen would discuss other efforts regarding the mitigation for the actual construction.

Ms. Dolbee gave a brief overview of the project and entered exhibits. The applicant asked for a SEPA determination for the replacement of the existing Stonegate Lift Station and the Summerwind Lift Station for one combined lift station and approximately one thousand linear feet of 12 inch and 15 inch sanitary sewer pipe and 4,900 linear feet of 8 inch sanitary sewer pipe. The sanitary sewer pipes are located within the rights-of-way of NE Sunset Boulevard, NE 26<sup>th</sup> Street, Lyons Ave NE, NE 22<sup>nd</sup> Court, NE 20<sup>th</sup> Street and Field Ave NE. The new lift station would be located in the northeast corner of the parcel.

The ERC issued a DNS-M with 2 mitigation measures.

With SEPA, if something is a code requirement, safety plan, traffic plan, times of construction, etc., those are not made additional mitigation measures because they are subject to appeal and those requirements must stand. In this circumstance, the safety and traffic plan are not required submittals for the SEPA review but are required prior to commencement of construction. Those will have to be reviewed and approved.

Just north of 26<sup>th</sup> Street is the existing Stonegate lift station that will be removed. It is approximately the size of a large dog house. North of that is Tract H, the location of the new Stonegate lift station. There is a note on the plat that states that Tract H is for open space and for signs and lighting and shall be owned and maintained by the Stonegate Homeowners' Association and is subject to an easement for sanitary sewer and storm drainage in favor of the City of Renton. The lawn area would not be impacted and would remain the same. The area for the new lift station is currently overgrown with blackberries and other vegetation.

The new Stonegate lift station would include a control building, a generator, both of which would be above ground. Below ground to the east would be an overflow storage, a wet well and a valve vault.

The landscape shows landscaping to the east, west and south, which would provide substantial screening from the neighborhood and the asphalt driveway. The lift station would be accessed directly off of 148<sup>th</sup> Avenue SE.

There were two streams identified in the critical areas report and two wetlands. Within the area of the lift station there are two streams and one wetland, one stream is a Class 4 stream on the west side of Lots 1 and 2. The sewer division will fence the wetland buffer and the easement to provide protection during construction.

Ann Nielsen asked questions of Vanessa Dolbee regarding the process of the critical area study and the geotechnical study and the fact that both were based on expert studies and analysis. The reports meet the City code requirements. These studies were also evaluated as a part of the SEPA process.

Mr. Chappelle asked questions of Vanessa Dolbee regarding the traffic control plan and that it is required by ordinance and not SEPA, and wondered why SEPA asked for proposed measures to reduce or control transportation impacts.

Ann Nielsen stated that Ms. Dolbee had indicated that the traffic mitigation plan was not required as part of this particular SEPA evaluation. The basis for that determination is that it will be evaluated at a later date prior to the commencement of construction. Traffic impacts are reviewed if the impacts increase by the construction as a direct result of this project. There may be some temporary construction traffic impacts, but that would end when the construction ends.

Mr. Chappelle stated that the open space was the only recreation area in the area. On the right hand leg of Tract H there is a note that shows the existing sanitary station.

The Examiner stated that the easement covers the entirety of Tract H, not just a portion of it.

John Hobson stated that he is the project manager for the design construction for the Stonegate lift station project. Currently the Stonegate station is serving more than it was originally designed for, it is at the low end of the basin and there are new neighborhoods that flow into the system. It no longer has the overflow capacity that is required. It currently pumps up to the Summerwind lift station and relies on the Summerwind lift

station to pump all the sewage to Duvall Avenue. Summerwind lift station is 25-years old, it is at the end of its lifecycle. It does not make any sense to replace the Summerwind lift station when it can be removed, run gravity down to the Stonegate lift station and rebuild the Stonegate station big enough to take the entire basin and serve it with one station rather than two and have the required overflow capacity. Should there be some type of shutdown by the facility or generator failure there would still be two hours of time for maintenance crews to get out and hook up a portable generator as well.

This new design has two backups, an on-site generator and a connection for a portable generator. If the new station is not put in now, there would be a sewer moratorium and no further development in the area would be allowed. The new station would be designed to serve the entire basin at full build out, a 20 year anticipated growth.

Recently a developer attempted to build a new house on 148<sup>th</sup> and in the process of putting in the sewer line, the road was chewed up quite badly, as part of this project, that part of 148<sup>th</sup> that was damaged would be resurfaced

A new drawing of the lift station with regards to the wetland boundary was presented, the circular arcs were incorporated into the new drawings. The 100-foot arcs show that projecting 100 feet off the center, the buffer is protected in all directions. They will be building a fence along the buffer line and will have no construction in the buffer area. There will be no permanent construction within the buffer area. The actual temporary construction will also stay outside of the buffer area.

Regarding the impervious surface, Mr. Chappelle is correct, the actual addition of impervious surface is just slightly under 4,400 square feet. That additional impervious surface is under the required surface for doing any type of mitigation to it under the 2005 King County Surface Water Manual, however, the City is going above and beyond and will be installing an oil/water separator on the site for water quality purposes and the water will be dispersed using a level spreader, which will slow the rate down so it does not come out in a fixed small point, it will be spread out and flow into the buffer area through a long spread pipe.

Mr. Chappelle stated that he appreciated that the City is recognizing that there were some errors, it was his feeling that those errors are not going to have any outcome in the mitigation area. There is one concern remaining and that would be with the animals that are in the area, in particular a bobcat that has moved in the area. He asked if anything was being done to protect those animals.

Ilon Logan stated that she is with ESA Adolfson, 5309 Shilshole Avenue NW, Ste. 200, Seattle 98106. She is a professional wetland scientist and she did the field work on the wetland boundary, she visited the site on June 5, 2007 and a second time on February 14, 2008.

The incorrect figure within the SEPA report on Exhibit 7 (fig 4), the error was DP4 located at the NE corner of the exhibit. DP4 showed an intrusion that was not in the wetland area, it showed it just outside of the wetland, and that is incorrect.

DP stands for Data Plot – pits are dug into the ground data sheets are written up that characterize the wetland or upland areas. She was unaware that the location on the map was incorrect until the appellant's letter. She went back to the original sketch map that was made after the site visit. The original map shows that DP4 was meant to be within the wetland. She worked with the CAD technician in the office, pulled up the original land survey data, went through each of the flag points and tried to figure out if there was an error made on their part. There was an error. There was a flag on the map that read "DP" they were not sure where it had come

from, most likely from some previous flagging, it is an unidentified point that was picked up by the surveyors and later on incorrectly labeled as DP4.

A corrective figure, which was entered at the beginning of the hearing, shows DP4 in the correct location and titled "corrected Figure 4".

They follow the Army Corps of Engineers 1987 Wetland Delineation Manual, which is adopted by the City of Renton Municipal Code. It is based on the soil, vegetation and general hydrology. The wetland is determined by digging the data plots in the upland and wetland and then it is determined where the boundary lies between the two. The soils would be probed to find the edge of the wetland, everything has to meet the criteria that is outlined in the Army Corps of Engineers manual.

It is not significant that it was misplaced on the exhibit, the wetlands seem to have been defined in the same place in both exhibits.

Ms. Nielsen concluded that appeal items 2, 3, 4, and 7 could be withdrawn from the appeal. This was agreed by both parties, leaving items 1, 5, and 6 still at appeal.

Lunch Break: Return 1:32 pm.

Dave Christensen, City's Waste Water Utilities, Engineering Supervisor stated the efforts that the City has gone through with the neighborhood in negotiations for the easement that was obtained and in order to mitigate neighborhood concerns.

He has been meeting with this neighborhood for approximately a year and a half trying to understand what the issues are with the project and identifying the things that could be taken care of as part of the project. As for the easement for the new lift station location, six specific items were found agreeable to the homeowners' association. There is a written agreement that includes the following:

- Roadway improvements on 148<sup>th</sup> including pavement, curb, gutter and sidewalks.
- Where the sewer line would be installed on the roadway, they are required to grind and overlay those portions that were disturbed, including a five foot grind on the edges and a repave of the rest of the roadway. They preferred to have a subdivision that looks like it has new roadways, so it was agreed that they would grind to a 2" grind and overlay on all of the public roadways contained within the Stonegate plat.
- Restore all trench work with a hot mix patch.
- Landscaping would be installed to blend with the existing landscaping on Tract H around the lift station in order to buffer the station from the surrounding Stonegate neighborhood.
- As part of the new lift station there is an emergency generator that will be on the site, they agreed to not exceed 45 dba on the property line between Tract H and Lot 1 on Stonegate. This generator will only operate when the other generator cannot operate.
- When they exit the Stonegate neighborhood and enter into the Summerwind neighborhood they go through Tract G, which is an emergency Fire Department access road. There are two gates on that road, one on each end. They have agreed to replace those gates with more current conforming gates that allow for better pedestrian access and bicycle passage.

These agreements are listed in a letter of agreement between the City of Renton and the Stonegate Homeowners' Association.

Currently the existing lift station is accessed off of NE 26<sup>th</sup> Street, that access has now been moved to 148<sup>th</sup> Ave SE in order to not have maintenance affect the neighborhood when they are working and doing maintenance on the lift station. The intersection of NE 26<sup>th</sup> and 148<sup>th</sup> is the location where the Issaquah School District picks up the school children. It has been agreed that the contractor will not start work in that intersection area until after 9:00 am to allow the school children to be picked up.

They have also established an e-mail contact and a phone contact with the Stonegate Homeowners' Association and the Summerwind Homeowners' Association so that as activities occur within the neighborhood they can be kept up to date on what is happening with the project. The scheduled hours of work are standard for the City of Renton of 7:00 am – 5:00 pm Monday through Friday with the additional safety concession of 9:00 am at the entrance to accommodate the school children. They do not anticipate any weekend work, but it cannot be completely excluded. It would have to be by special request from the contractor. Code does not allow work on Sunday for any reason.

Mr. Chappelle asked about the safety plan that appears to protect the workers with no focus on the neighborhood. If a construction mitigation plan is required then one of the things attached would be a preliminary traffic control plan. It appears that these plans do exist in some circumstances prior to the final application process.

The Examiner questioned Mr. Christensen regarding safety standards for the general public.

Mr. Christensen stated that those standards are identified in their construction documents and the state has documentation for the public safety through their L&I documents. The City and the State have requirements that not only protect the workers but as well the general public that are around the project. They have traffic cones, one or two flaggers depending upon the length of the trench. This project is not unique in any manner, this standard construction that is done in neighborhoods throughout the City.

Mr. Chappelle stated that he has stated his desires for communication so that there is no misunderstanding of expectations on either side.

Mr. Christensen stated that the generator would be run once a week or once a month during normal daytime hours to ensure that its operation is there when the emergency does occur. It is there for emergency purposes only, but it does require testing to make sure it is operational when an emergency does occur. Most likely it would be once a month.

Mr. Chappelle questioned the start time of 9:00 am, but what about when the children return from school, which normally occurs between 2:30 and 4:00 pm.

Mr. Christensen stated that was not an issue expressed by the homeowners' association, it appeared to not be as critical a time as the morning, so no modifications were made to the afternoon work schedule. If it was brought up by the homeowners' association, they would make every effort to accommodate. The important thing to remember is that the work being done at the intersection would take 1-3 days and then they will be moving up the street.

Mr. Chappelle stated that he did not know about the agreement with the homeowners' association and the City for the easement and therefore, he would withdraw issue #5.



The Examiner explained the SEPA appeal process and the fact that sometimes the City adds some code provisions, but those provisions are not part of the SEPA and therefore are not subject to appeal. As each section of street is torn up, people living in that section will be inconvenienced when coming or going. Those things have to be coordinated. It appears that there is an e-mail and phone list to help do that. So while the concern for the neighborhood is understood, some of the issues are not really SEPA issues, hopefully these issues can be settled prior to construction

Mr. Chappelle stated that he did understand, but since they are not addressed anywhere else he has no other recourse. He would like that concern to be reflected in the record, he would not belabor the issue any further.

Upon questioning by Mr. Chappelle, Mr. Christensen stated that he is not a licensed engineer but within the staff there are multiple professional engineers and this project was designed by an outside consultant and the people working on it are registered professional engineers.

In closing, Mr. Chappelle stated that his concern with the incomplete and inaccurate application package has had several of the omissions and errors corrected. He is still concerned with the impacts to wildlife, it appears that the particular department reviewed the package prior to the received comments in that area. It is not entirely clear that the public comment was available to the ERC when that determination was made, it may not have resulted in any mitigation, but it should be included in the record.

With respect to the comprehensive plan concerns and how priorities are balanced it appears that would be best covered in another venue, he would welcome the Examiner's findings in that area based on the arguments presented today.

He welcomed the City's correction on the 100' buffer depiction to more accurately make that calculation. He also welcomed the correction on the DP 4 as it was in the critical areas report to explain the error and make it clear that the City is conforming to the requirements.

As to the noise standards, he has withdrawn that concern.

With respect to the failure to impose sufficient conditions on noise, traffic, and safety, he still has concerns that the planning is not complete nor an accurate depiction of what is going to happen within the community. They appear to be a long ways from an acceptable standard in terms of communicating with the community. He would like to see the City step up to a much higher standard of coordination to make sure there are no tragedies in the neighborhood.

With respect to the schedule, there still exist some discrepancies within the application package regarding how long this will take. He recalled a statement being made at one of the homeowners' meetings that this project could take as long as 15 months. That makes it appear that the project has not been planned out. There just is not a lot of evidence that good planning has been done.

In closing, Ms. Nielsen stated that she would like to clarify that what is left in this appeal is #1 and #6 everything else has been stipulated to or withdrawn.

It appears that the main issue today is a simple fact of inconvenience of construction that must be dealt with in this neighborhood. There is an inconvenience with highway repair that everyone that drives those roads must deal with, there is inconvenience when bridges get shut down for a Seafair festival. The bottom line is, this is

catalyzed by inconvenience, which is not necessarily unjustified. Anyone who lives on this residential or public street would obviously be inconvenienced.

What is before the Examiner is a limited issue, whether this project and in particular the determination that SEPA came to, that is DNS-M, whether the Appellant has shown that there is a significant adverse impact, if so was it not mitigated by the mitigation conditions that were put upon by SEPAs evaluation and issuance of a DNS-M. In the first instance, with #1 it does not appear that the Appellant has come close to meeting his burden to overcome the SEPA determination, he made general categorizations of what he believes is missing or erroneous information without being able to substantiate what is basis for those allegation. The City has shown the documentation, methodology and information that it relied on, there has been no concrete evidence or showing any inconsistencies or omissions.

#6 brings the point of have the impacts been mitigated, there are going to be impacts and they are an inconvenience. The inconvenience will not only be to the people living there, but the people having to travel along 148<sup>th</sup> as well. Has the City done everything to mitigate those potential impacts, not only did they meet those impacts, but they went above and beyond taking into consideration the inconveniences that are going to be caused to the nearby residents.

The King County Surface Water and Design Manual only requires a standard of up to 5,000, the City has taken more mitigation efforts in dealing with the impervious surface issues.

The noise and traffic control plans were addressed, they were contemplated and reviewed and they were assessed all during the ERC process. Until the project actually begins, there will be no specific traffic control plan in place, they would not be able to consider the specifics during the SEPA process.

The appellant must show that there was significant error that this project did of itself as it was presented to the ERC constitutes a significant impact, the appellant has fallen far short of meeting that burden. They ask that the Examiner affirm the decision of the ERC.

Mr. Chappelle stated that the City has acknowledged minor errors and he believes that ERC deserves the opportunity to re-evaluate with the corrected information and with full benefit of the complete public comment. With respect to #6 the absence of the information speaks for itself. If the information does not exist as of yet, how can ERC rule on whether or not the mitigation is adequate. Those are elements of concern to the community and the community needs to have input and a voice on those issues.

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 2:18 am.

### **FINDINGS, CONCLUSIONS & RECOMMENDATION**

Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### **FINDINGS:**

1. The appellant, Douglas E. Chappelle, filed an appeal of a Determination of Non-Significance –Mitigated (DNS-M) that the City issued for the proposed Stonegate Sewer Lift Station. The appellant filed the appeal in a timely manner.
2. The City is in the process of replacing two existing lift stations. One of the stations, Springbrook, is old

and in need of replacement. The second station is the original Stonegate Lift Station and the City determined that it was inadequate to serve the vicinity surrounding it. The City determined that its best course of action was to install one larger station to replace those two older ones.

3. The City by its Public Works Department is the proponent of the lift station. The City is also the SEPA review agency. The City's Environmental Review Committee (ERC) reviewed the proposal and issued the DNS-M.
4. The ERC imposed the following two conditions:
  1. The applicant shall be required to comply with the recommendations included in the geotechnical report, "Final Geotechnical Report" prepared by HWA GeoSciences Inc., dated November 7, 2008.
  2. Temporary construction fencing shall be placed along the portion of the 100-foot buffer area of Wetland A that is immediately north of the Stonegate lift station construction site prior to commencement of construction.
5. The proposed lift station will be built on an easement in the Stonegate Subdivision's Tract H. It will cover approximately 4,500 square feet (corrected from a figure of approximately 1,000 square feet – see below). In addition to the actual lift station approximately 1,000 linear feet of 12 and 15-inch sanitary sewer pipe and approximately 4,900 linear feet of 8-inch sanitary sewer pipe will be installed or replaced in the rights-of-way of NE Sunset Boulevard, NE 26th Street, Lyons Avenue NE, NE 22nd Court, NE 20th Street and Field Avenue NE. The old lift station and the Summerwind Lift Station will be removed as part of this project.
6. The applicant does not propose to remove any trees as part of this proposal.
7. The project is located near two wetlands and two streams. One wetland feeds May Creek which is north of the proposed lift station. A critical areas report was prepared for this project. As it currently stands, no work will occur within the critical areas buffers for either wetland or either creek. There was some initial information that showed that the required wetland buffer was not appropriately delineated and that work might occur within that buffer.
8. The appellant originally submitted seven (7) issues on appeal. All but two of these issues were resolved at the public hearing. Nonetheless, some of the resolved issues are what the appellant indicated were indicative of the erroneous or misleading information that the ERC relied on when making its determination. Therefore, the appellant still believed that the ERC should be re-reviewing the proposal in light of all of the information.
9. The appeal letter raised the following seven issues:
  - 1) Incomplete and Inaccurate application Package - Numerous material errors and omissions exist in the application and several were identified by timely public comments. These errors and omissions included inaccurate calculations (egg. impervious area) inconsistencies (egg. schedule durations) incomplete statements (e.g. subject 5. Animals), and omissions (e.g. traffic control and safety plans). Failure to demand a correct and complete package damages the credibility of the determination. By WAC 197-1 1-080 (Renton adoption through RMC 4-9-070D), the ERC are required to obtain and include information regards significant adverse

impacts in their environmental documents. In the absence of this vital information, the ERC must make clear that such information is lacking or that substantial uncertainty exists. If the costs are not exorbitant nor the means to obtain it speculative or not known then the information must be obtained.

- 2) Violation of Comprehensive Plan - During the public comment period the ERC was notified of certain impacts or inconsistencies the subject project makes to the City of Renton Comprehensive Plan [e.g. Comprehensive Plan Elements P-6, P-41, P-E, P-53, P-56]. The City requires themselves to be consistent with the Comprehensive Plan per RMC 4-1 -070A. In the event the Comprehensive Plan as implemented by Chapter 4 of the PMC conflicts or overlaps, the provisions of RMC 4-1-080 govern and an interpretation of requirements is required. There is no evidence in the ERC Report that the conflicts were considered much less an implementation interpretation made and documented. Note that RMC 4-1-070D requires that the most restrictive/higher standard govern in the event of conflict.
- 3) Incorrect Wetland Bounds 100 ft Buffer Depiction - The 100 ft wetland boundary buffer depicted in Exhibits 3, 6 and 7 of the ERC Report is incorrectly constructed [even assuming the wetland boundary has been correctly identified in the ERC Report - see item 4) below]. As a result the lift station facility encroaches into the buffer area by several feet. This encroachment defeats the intent of RMC 4-3-050A7. Such a result was clearly not intended by the ERC in their report however the lament error in the materials supplied by the applicant and adopted by the ERC has apparently passed unnoticed to date. The ERC should correct the depiction of the Wetland Buffers to comply with RMC 4-3-050.M.6.
- 4) Failure to use 'Best Available Science' - The ERC failed to provide proper consideration to the Critical Areas Report finding that DP-4 was within a wetland. As pointed out in public comments, the depicted boundary excludes point DP-4 by a substantial amount indicating that the wetland boundary is significantly different than that mapped in exhibits 3, 6 and 7 of the ERC Report. Through RCW 36.70A.172 the City, in designating and protecting critical areas are required to include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, the City is required to give especial consideration" to conservation or protection measures necessary to preserve or enhance anadromous fisheries. The Administrator (as referred to in RMC 4-3-050.M.4.d.i), presumably embodied by the ERC, upon being made aware of the science contained within the Critical Areas Report should have determined that reconditions have changed old orders a new delineation of Regulatory Edge of Wetlands in accordance with RMC 4- 3-050.M .4.a. in order to fully comply with RCW 36.70A.172.
- 5) Noise Standards - The ERC Report in paragraph D.4 presumes to declare the point at which the noise measurement of the emergency power generator should be made is at the property line between Tract H and Lot 1 of Stonegate. The value of 45 dBA is correct in accordance with WAC 173-60-040(2)(a) and (b). However, conducting the measurement at the property line between Tract H and Lot 1 would probably constitute a trespass by the applicant. Endorsing the measurement at this location through the ERC Report rises to the level of an unconstitutional "taking" by the City. The correct location for the measurement is defined by the boundary of the easement granted by the Stonegate HOA, beyond which the applicant has not secured any rights.

6) Failure to impose sufficient conditions to mitigate impacts - The ERC Report fails to adequately address several aspects of the SEPA checklist.

a. Noise - The ERC Report fails to address allowable noise criteria during construction merely characterizing the noise as short term and "temporary." As such the applicant has violated RMC 4-9-070L.9 and the ERC has allowed this violation to pass uncorrected thus violating their duty under 4-1-070A and WAC 197-11 in general and WAC 197-11-660 in particular.

b. Traffic Control Plan - The omission of the traffic control plan noted in ERC Report paragraph D.6. and the validation thereof by merely requiring that "a traffic control plan would be required prior to construction" serves to deny the Public any meaningful recourse as to its content. As the traffic control plan was not available during the public review period nor was it available to the ERC for attachment to their report (or was omitted if it was), the contents of the eventual traffic control plan are not subject to redress through this appeal process as the time limits for appeal will have expired long prior to its availability. As such, the applicant has violated RMC 4-9-070L.9 and the ERC has allowed this violation to pass uncorrected thus violating their duty under 4-1-070A and WAC 197-11 in general and WAC 197-11-660 in particular.

c. Safety Plan/Considerations - The omission of any mention of a safety control plan or the safety monitored and their duties responsibilities and powers as cited by the applicant in his response to Public Comment serves to deny the public any meaningful recourse as to its content or lack thereof. As the ERC Report fails to mention safety planning as a topic nor the safety monitor volunteered by the applicant it can only be concluded that such artifices don't actually exist or are constrained by the limits of existing developmental standards and environmental regulations. Either way, the ERC Report fails to adequately consider and mitigate for the applicant's proposed introduction of certain attractive nuisances and health hazards into the particular and peculiar environments of Stonegate and Summerwind. By virtue of this omission the subject of enhanced or tailored safety mitigation measures beyond to limits of existing developmental standards and environmental regulations is not subject to redress through this appeal process or through future enforcement action (since nothing is required of the applicant), By allowing this omission to pass, the ERC has failed in their duty under 4-1-070A and WAC 197-11 in general and WAC 197-11-660 in particular.

d. Schedule - The ERC Report fails to place a constraint on allowable schedule for the accomplishment of primary construction. As such, the applicant is presumed to have a free hand to take as long as he wants or even to abandon the project up to the limits of existing developmental standards and environmental regulations. By virtue of this omission, the subject of how long the disruption to the neighborhoods might last up to the limits of existing developmental standards and environmental regulations is not subject to redress thorough this appeal process or through future enforcement anion (since nothing s optic is required of the applicants. By allowing this omission to pass, the ERC has failed in their duty under 4-1-070A and WAC 197-11 in general and WAC 197- 11-660 in particular.

7) Failure to determine 'essentialness' of the project - As the WAC make special allowances in

certain criteria when a construction project concerns an "essential utility" it is vital to make a determination as to whether or not this project is in fact "essential" as proposed. To fail to make this determination introduces uncertainty into which criteria should be used when and how. As the City (as applicant) has proposed this project it substantially exceeds the threshold criteria of RCW 36.70A.020 (12) ". . . that those public facilities and services decrease to support development shall be adequate to serve the development at the time the development is available for occupancy ..." By this project being a matter of choice and not imminent necessity, the ERC should find that the proposed project, while unquestionably a utility project, is not, in fact "essential."

10. The appellant believed that the concerns of the neighborhood were not heard and the City did not respond to those concerns. While it is not necessary to rehash the history of this project, the City indicated that it met with the community for over one and a half years and met with Stonegate's residents over the easement and conditions for granting it. The City agreed in advance to certain conditions that became part of the background mitigation measures for the proposal. Those included: upgrading 148th Street immediately east of the site to include curbs, gutters and sidewalks; grind and repave the entire plat so that the road was not merely patched; restore the trench with hot mix so it is not left open; install and modify landscaping on Tract H to blend with the existing landscaping and restore the work areas; emergency power generators would not exceed 45 dBA at Lot 1, the nearest residential parcel; and upgrade the pedestrian gates on Tract G. The City also decided that access would be via 148th and not through the plat other than when working on specific segments. Additionally, the work would be scheduled to not interfere with the school bus stop in the morning hours; work would be governed by the code on hours of operation which are 7a.m to 5 p.m. Monday through Friday and no Sunday work; establish an e-mail and phone tree to inform residents of both Stonegate and Summerwind of activities; and open only 150 feet at any one time and restore that area as they progress. The City indicated it was amenable to addressing the afternoon school bus schedule.
11. In addressing the appeal issues, the appellant more specifically objected to the absence of a Traffic Control Plan and a Safety Plan. The appellant believed that in order to review this project for its environmental impacts both plans needed to be available for the ERC. The City noted that both plans are generally formulated with the contractor and that, at this point, or when the ERC review was done, no contractor had been selected. It was explained to the appellant that those measures usually come out of the contracting for a project.
12. Certain SEPA guidelines may be used to create special review criteria or limitations on the review for "essential" utilities. The City presented testimony that it was not enlisting any exceptions for this proposal. It was not going to be declared an essential utility.
13. The appellant alleged that the City did not determine that the project was needed and was merely a matter of choice. This office has no ability to second guess decisions of the City on capital improvement projects as a primary appeal issue. If on review it was determined that an EIS were required, then alternatives including a "no build" option might be included in such analysis but not as a standalone issue in a SEPA appeal.
14. The City noted that its calculations for impermeable surfaces were incorrect. The correct value should have been 4,400 square feet. The City noted that this value still falls under the threshold in the 2005 King County Storm Water Manual for special considerations but that the City will still be providing an oil water separator and a spreader pipe system.

15. The City, through its wetlands consultant, admitted that Data Plot 4 (DP4) was inadvertently misdrawn on the Exhibit J. It was depicted as displaced to the west and outside of the wetland area. It was correctly located in the field and on the new exhibits.
16. The City testified that the wetland buffer's 100 foot setback will be observed in all directions from the wetland boundary. The buffer's boundary had been depicted as merely displaced to the south 100 feet which would not have provided the appropriate 100 foot buffer to the portions of the wetland that projected south. The actual plans for the lift station will observe the buffer and no work will occur within the buffer.
17. The appellant was concerned that the project or portions of it or its equipment would represent an "attractive nuisance" to children. These issues are not any different for this project than any other construction project. While those concerns may be legitimate, they do not rise to creating more than a moderate impact on the quality of the environment. The City also noted that each segment of trench will be filled at the end of the day and that there should not be any portions left open.
18. The appellant was concerned about noise created by the emergency generators that serve as backup power in the event of a general power failure. These generators are tested periodically, once a week or once a month. Testing reveals that noise at the perimeter or the closest receiving residential structure will meet code requirements.

#### CONCLUSIONS:

1. The decision of the governmental agency acting as the responsible official is entitled to substantial weight. Therefore, the determination of the Environmental Review Committee (ERC), the city's responsible official, is entitled to be maintained unless the appellant clearly demonstrates that the determination was in error. The appellant has failed to demonstrate error.
2. The Determination of Non-Significance in this case is entitled to substantial weight and will not be reversed or modified unless it can be found that the decision is "clearly erroneous." (Hayden v. Port Townsend, 93 Wn 2d 870, 880; 1980). The court in citing Norway Hill Preservation and Protection Association v. King County Council, 87 Wn 2d 267, 274; 1976, stated: "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Therefore, the determination of the ERC will not be modified or reversed if it can meet the above test. For reasons enumerated below, the decision of the ERC is affirmed.

3. The clearly erroneous test has generally been applied when an action results in a DNS since the test is less demanding on the appellant. The reason is that SEPA requires a thorough examination of the environmental consequences of an action. The courts have, therefore, made it easier to reverse a DNS. A second test, the "arbitrary and capricious" test is generally applied when a determination of significance (DS) is issued. In this second test an appellant would have to show that the decision clearly flies in the face of reason since a DS is more protective of the environment since it results in the preparation of a full disclosure document, an Environmental Impact Statement.

4. An action is determined to have a significant adverse impact on the quality of the environment if more than a moderate impact on the quality of the environment is a reasonable probability. (Norway, at 278). Since the Court spoke in Norway, WAC 197-11-794 has been adopted, it defines "significant" as follows:

Significant. (1) "Significant" as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity ...Intensity depends on the magnitude and duration of an impact.... The severity of the impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.
5. Also redefined since the Norway decision was the term "probable."

Probable. "Probable" means likely or reasonably likely to occur, ...  
Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. (WAC 197-11-782).
6. The appellant did not provide a basis that could be used to reverse the City's determination. The proposal will undoubtedly create impacts to the community. There will be impacts from constructing the lift station although it is more remote, and more impacts from the ripping up of pavement, trenching and pipe laying, backfilling and eventual repavement but these activities and their disruption in an urban environment will be localized, temporary and eventually hidden. In an urban environment streets are periodically repaved, and water and sewer lines replaced. It is true that the applicant made some mistakes and submitted some erroneous information to the ERC. But even those mistakes do not amount to errors that require re-review by the ERC. The question is, overall, did the ERC reach a reasonable conclusion or is the conclusion clearly erroneous or arbitrary and capricious. The applicant's map shows DP4 displaced from its true position. The impermeable surface area was also miscalculated. DP4's position had no real bearing on the issue. While the actual impermeable surfaces do exceed those submitted by a factor of 3 or 4, those numbers still fall within the guidelines of the Stormwater Manual requiring no special conditions and the applicant is doing more than required by Code. The project is modest and its more profound effects, digging and trenching in front of peoples' homes, are transient. Although its linear footprint runs about a mile, trenching will be done in short, 150 foot segments and closed up. The roadway will be regraded at the completion of the project. The lift station itself will be replacing one already on the subject site that is insufficient and another offsite lift station that is getting antiquated. The lift station will be landscaped to blend in with the immediate area. No work will occur in the wetland or wetland buffer areas. Noise meets code requirements. Transportation and safety plans are generally drawn up when the contract is signed. These are not issues generally addressed by the ERC but other code requirements.
7. Looking at the entire project and the current urban environment of homes, streets and sidewalks and the Tract H open space, the reviewing body has to determine if this proposal would have more than a moderate impact on the quality of the environment. It does not appear that the proposal has the level of impacts or potential impacts that demand additional environmental scrutiny. The appellant has not shown that the ERC was substantially misled by some of the information it had when reviewing this proposal. While there were errors in submittals, they were not substantial in a manner to have misled the ERC to the



overall consequences of this proposal. This office does not believe that the decision of the ERC needs to be reversed or modified.

8. The appealing party has a burden that was not met in the instant case. The decision of the ERC must be affirmed.

**DECISION:**

The decision of the ERC is affirmed.

ORDERED THIS 25<sup>th</sup> of August 2009

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FRED J. KAUFMAN  
HEARING EXAMINER

TRANSMITTED THIS 25<sup>th</sup> day of August 2009 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Renton Reporter	

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., September 8, 2009.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., September 8, 2009.**

**If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file.** You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.